

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:

JAMES SCOTT SMITH
KATHLEEN RENEE SMITH

Debtors

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CASE NO. 05-41799

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on

This matter is before the court on debtors' motions, filed pursuant to 11 U.S.C. §522(f)(1), to avoid judicial liens which allegedly impairs an exemption in real estate. The liens in question are held by Banc One, Great Seneca Corp., Chase Manhattan Bank, and Ford Motor Credit. Despite the fact that the motions are unopposed,¹ the court cannot properly grant them because they fail to allege sufficient facts to state a cognizable claim for lien avoidance pursuant to §522(f)(1). See, In re Wall,

¹The court notes that creditors and parties in interest have not been given appropriate notice of the motion and the opportunity to object thereto. N.D. Ind. L.B.R. B-2002-2. The only copy of the notice presented was the one attached to each motion. This is insufficient. A motion and any associated notice of it are two different things, see e.g. N.D. Ind. L.B.R. B-9013-2(b) ("Service of a motion...upon the entities entitled to receive it is required in addition to service of any notice concerning the motion..."), and except as may be expressly authorized, see e.g. N.D. Ind. L.B.R. B-4004-1(a); B-9010-2(e), they may not be combined into a single filing. See also, N.D. Ind. L.B.R. B-9013-1(a). The notices suffer from other deficiencies, as well. They do not adequately "state the relief sought" by the motions, N.D. Ind. L.B.R. B-2002-2(c)(3), because the lienholders are not identified in them. They do not "contain a brief summary of the ground for the motions or have a copy of the motion attached to it." N.D. Ind. L.B.R. B-2002-2(c)(4). Furthermore, neither the motions nor the notices were served upon the lienholders, but instead upon an attorney who has not filed an appearance in the bankruptcy. This is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002). As it pertains to the requests to avoid the liens of Bank One and Chase Manhattan Bank, the lienholders appear to be insured depository institutions and have not been served by certified mail as required by Bankruptcy Rule 7004(h). These procedural deficiencies would prevent the court from granting the motions under any circumstances. Nonetheless, correcting them would serve no purpose because the motions are also deficient.

127 B.R. 353, 355 (Bankr. E.D. Va. 1991). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief “with particularity.” See, Fed. R. Bankr. P. Rule 9013.

Not every judicial lien upon exempt property may be avoided. Lien avoidance pursuant to §522(f)(1) is available only where the judicial lien impairs a claimed exemption. The concept of impairment was reduced to a mathematical formula by the amendments to §522(f) promulgated by the Bankruptcy Reform Act of 1994. 11 U.S.C. §522(f)(2)(A); In re Thomsen, 181 B.R. 1013, 1015 (Bankr. M.D. Ga. 1995). When the amount due on account of the liens sought to be avoided, all other liens on the property and the amount of the debtor’s exemption “exceeds the value that the debtor’s interest in the property would have in the absence of any liens” the debtor’s exemption is impaired. 11 U.S.C. §522(f)(2)(A)(I) thru (iii). Thus, in order for the court to determine if a judgment lien impairs an exemption to which a debtor may be entitled, in addition to identifying the property subject to the judicial lien, the motion must provide information concerning the value of the property, the amount due on account of all liens against it, and the amount of the exemption claimed by the debtor. 11 U.S.C. §522(f)(2)(A); see also Thomsen, 181 B.R. at 1015-16.

While the debtors’ motions state that they are entitled to an exemption, and that the property has been claimed as exempt, the motions do not provide any information concerning the amount of the exemption actually claimed by the debtors. Furthermore, the motions do not contain any information regarding the amount due on any liens secured by the property. Without this information the court does not have sufficient facts before it to determine whether the liens in question impair a claimed exemption. As such, the motions fail to state a cognizable claim for lien avoidance pursuant to §522(f)(1) and are DENIED without prejudice to resubmission.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court